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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA
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10 KYLE LEE PAYMENT,

11 Plaintiff,

12 v.

13 BERNARD WARNER et al.,

14 Defendants.

CASE NO. C14-5748 RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR: JANUARY 2, 2015

15 The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States
16 Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local
17 Magistrate Judge Rules MJR1, MJR3 and MJR4.

18 Plaintiff has filed a motion to dismiss his action prior to service (Dkt. 10). Plaintiff filed
19 his motion pursuant to Fed. R. Civ. P. 41(a). Fed. R. Civ. P. 41(a) states:

20 (a) Voluntary Dismissal.

21 (1) By the Plaintiff.

22 (A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2,
and 66 and any applicable federal statute, the plaintiff may dismiss an
action without a court order by filing:

23 (i) a notice of dismissal before the opposing party serves either an answer or a
motion for summary judgment; or

24 (ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

The Court is not aware of a prior dismissal of any action of this claim. The Court recommends dismissal of the action without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of de novo review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on January 2, 2015, as noted in the caption

Dated this 8th day of December, 2014.

J. K. Head (matins)

J. Richard Creature
United States Magistrate Judge